

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-46-ES.1

Date: 3 February 2025

Original: English

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**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Graciela Gatti Santana, President

**Registrar:** Mr. Abubacarr M. Tambaou

**Decision of:** 3 February 2025

**PROSECUTOR**

v.

**RADISLAV KRSTIĆ**

***PUBLIC REDACTED VERSION***

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**DECISION ON THE APPLICATION  
FOR EARLY RELEASE OF RADISLAV KRSTIĆ**

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**Counsel for Mr. Radislav Krstić:**

Mr. Vladimir Petrović

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of Mr. Radislav Krstić’s direct petition for early release filed on 19 January 2024 (“Krstić” and “Application”, respectively).<sup>1</sup>

## I. BACKGROUND

2. On 2 December 1998, Krstić was arrested in Bosnia and Herzegovina and transferred to the International Criminal Tribunal for the former Yugoslavia (“ICTY”) the following day.<sup>2</sup>

3. On 2 August 2001, Trial Chamber I of the ICTY (“Trial Chamber”) convicted Krstić of genocide, persecution as a crime against humanity, and murder as a violation of the laws or customs of war.<sup>3</sup> The Trial Chamber sentenced Krstić to 46 years of imprisonment.<sup>4</sup>

4. On 19 April 2004, the Appeals Chamber of the ICTY (“Appeals Chamber”): (i) set aside Krstić’s conviction for committing genocide, and partially set aside his conviction for committing murder as a violation of the laws or customs of war, and instead found him guilty of aiding and abetting these crimes; (ii) resolved that the Trial Chamber incorrectly disallowed Krstić’s convictions as a participant in extermination and persecution in relation to two counts, but concluded that his responsibility was that of an aider and abettor in extermination and persecution as crimes against humanity; (iii) affirmed the remaining convictions for committing persecution as a crime against humanity and murder as a violation of the laws or customs of war; and (iv) reduced his sentence to 35 years of imprisonment.<sup>5</sup>

5. On 20 December 2004, Krstić was transferred to the United Kingdom of Great Britain and Northern Ireland (“United Kingdom”) to serve the remainder of his sentence.<sup>6</sup> Krstić was subsequently transferred from the United Kingdom to the Republic of Poland (“Poland”), and from Poland to the United Nations Detention Unit (“UNDU”) where he has been temporarily held since November 2023, pending transfer to a State where he will complete his sentence.<sup>7</sup>

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<sup>1</sup> Application for Early Release, 19 January 2024.

<sup>2</sup> *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 (“Trial Judgement”), para. 718.

<sup>3</sup> Trial Judgement, paras. 687-688, 719, 727.

<sup>4</sup> Trial Judgement, para. 727.

<sup>5</sup> *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004 (“Appeal Judgement”), p. 87.

<sup>6</sup> *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-ES, Order Designating the State in Which Radislav Krstić is to Serve his Prison Sentence, 11 November 2004, pp. 2-3.

<sup>7</sup> Order for the Transfer of Radislav Krstić to United Nations Detention Unit on a Temporary Basis, 27 October 2023, pp. 1-3; Order Designating the State in Which Radislav Krstić is to Serve the Remainder of his Sentence, 19 July 2013, pp. 1-2.

6. On 11 March 2024, I issued an order wherein I, *inter alia*, decided that Krstić shall serve the rest of his sentence in [REDACTED].<sup>8</sup> He has remained in the custody of the UNDU pending the completion of domestic proceedings in [REDACTED] related to the enforcement of his sentence.

7. Krstić has been denied early release on three previous occasions. On 13 December 2016 and 10 September 2019, respectively, Krstić was denied early release on the basis that he had not yet served two-thirds of his sentence and no compelling or exceptional circumstances justified his release before having served the requisite minimum number of years.<sup>9</sup> On 15 November 2022, I denied Krstić's direct petition for early release, having concluded, *inter alia*, that the high gravity of his crimes and his insufficient demonstration of rehabilitation strongly militated against granting early release.<sup>10</sup>

## II. APPLICATION

8. On 19 January 2024, Krstić filed the Application, in which he requests to be granted early release and indicates that, if released early, he would reside in the Republic of Serbia ("Serbia").<sup>11</sup> Krstić submits, *inter alia*, that having read and understood the 2022 Decision Denying Early Release and having "taken on board [the President's] criticism of the generic nature of his personal statement", he intends to provide a more comprehensive statement in support of this application for early release. According to Krstić, "[i]n order not to miss anything", he will provide his comments after all of the information has been gathered pursuant to the relevant Practice Direction (MICT/3/Rev.3).<sup>12</sup>

9. On 24 January 2024, the Office of the Prosecutor of the Mechanism ("Prosecution") filed a response to the Application,<sup>13</sup> and Krstić filed a reply thereto on 29 January 2024.<sup>14</sup>

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<sup>8</sup> Order Designating the State in Which Radislav Krstić is to Serve the Remainder of his Sentence, 11 March 2024 (confidential), p. 3.

<sup>9</sup> Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted), paras. 39, 41; Decision of the President on the Early Release of Radislav Krstić, 13 December 2016 (public redacted), paras. 39-40.

<sup>10</sup> Decision on the Application for Early Release of Radislav Krstić, 15 November 2022 (confidential) ("2022 Decision Denying Early Release"), paras. 93-94.

<sup>11</sup> Application, paras. 1, 22, 42.

<sup>12</sup> Application, para. 21, *referring to* Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020. This Practice Direction has since been revised. *See* Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.4, 1 July 2024 ("Practice Direction"). Unless otherwise indicated, reference will be made to the current version of the Practice Direction.

<sup>13</sup> Prosecution Response to Radislav Krstić's Application for Early Release, 24 January 2024 ("Prosecution Response of 24 January 2024"), paras. 1-4, 6-7. *See also* Prosecution Response of 24 January 2024, para. 5.

<sup>14</sup> Krstić Defence Reply to Prosecution's Response on Application for Early Release, 29 January 2024 (confidential with confidential and *ex parte* Annex), paras. 6-9.

10. On 20 March 2024, I requested the Registry of the Mechanism (“Registry”) to provide a copy of the Practice Direction to Krstić, if it had not already been done, and to collect from the UNDU the information enumerated in paragraphs 10(a) through 10(c) of the Practice Direction.<sup>15</sup>

11. On 2 May 2024, the Registrar of the Mechanism (“Registrar”) conveyed to me: (i) a report from the UNDU Deputy Medical Officer, dated 18 April 2024, on Krstić’s physical and mental health; and (ii) a report from the UNDU Commanding Officer, dated 19 April 2024, on Krstić’s behaviour in custody.<sup>16</sup>

12. On 21 May 2024, I instructed the Registry, in accordance with paragraph 12 of the Practice Direction, to convey to Krstić for his comments the Medical Report and the Prison Report.<sup>17</sup> I also asked the Registry to inform Krstić that: (i) I do not intend to collect any further information set out in the Practice Direction, and that, to the extent it is still relevant, I will take into account the extensive information that was collected with respect to his last early release application decided in November 2022; and (ii) any supplementary submission with respect to his acceptance of responsibility and remorse or the previously collected information should be sent with his comments.<sup>18</sup> With respect to the former, and as will be discussed below,<sup>19</sup> the previously gathered information included: (i) the views of the Association of Mothers of Srebrenica and Žepa Enclaves and the Association of Victims and Witnesses of Genocide on Krstić’s prospective early release;<sup>20</sup> (ii) the Serbian Minister of Justice’s indication that there are no obstacles to Krstić residing in Serbia, that the competent Serbian authorities are willing to monitor any conditions imposed by the Mechanism in the event of Krstić’s early release, and that the necessary guarantees to this effect would be provided;<sup>21</sup> (iii) the Prosecution’s comments and other information concerning Krstić’s prospective early release;<sup>22</sup> (iv) a compilation of media reports published in Serbia that concern Krstić;<sup>23</sup> and (v) information about

<sup>15</sup> Internal Memorandum from the President to the Registrar, dated 20 March 2024 (confidential), paras. 3-4.

<sup>16</sup> Internal Memorandum from the Registrar to the President, dated 2 May 2024 (confidential), *transmitting* an Internal Memorandum from the Deputy Medical Officer of the UNDU to the Registrar, dated 18 April 2024 (strictly confidential) (“Medical Report”) and an Internal Memorandum from the Commanding Officer of the UNDU to the Registrar, dated 19 April 2024 (“Prison Report”).

<sup>17</sup> Internal Memorandum from the President to the Registrar, dated 21 May 2024 (confidential) (“Memorandum of 21 May 2024”), para. 2.

<sup>18</sup> Memorandum of 21 May 2024, para. 4.

<sup>19</sup> *See infra* paras. 24-26.

<sup>20</sup> Joint Letter from the Association of Mothers of Srebrenica and Žepa Enclaves and the Association of Victims and Witnesses of Genocide to the then-President, dated 11 May 2022 (“Associations’ Letter”).

<sup>21</sup> *Note verbale* from the Embassy of Serbia to the Netherlands, dated 25 May 2022, *transmitting* a Letter from the Minister of Justice of Serbia to the then-President, dated 24 May 2022 (“Serbian Minister of Justice Letter”).

<sup>22</sup> Internal Memorandum from the Registrar to the then-President, dated 3 June 2022 (confidential), *transmitting* an Internal Memorandum from the Officer-in-Charge, Office of the Prosecutor, Hague branch, to the Officer-in-Charge, Registry, Hague branch, dated 3 June 2022 (confidential) (“Prosecution Memorandum”).

<sup>23</sup> Internal Memorandum from the Registrar to the President, dated 13 July 2022 (confidential), *transmitting* an Internal Memorandum from the Officer-in-Charge, External Relations Office, Hague branch to the Registrar, dated 13 July 2022 (confidential).

witnesses who testified or provided evidence against Krstić during his trial from the Mechanism’s Witness Support and Protection Unit (“WISP”).<sup>24</sup>

13. On 24 June 2024, Krstić filed a confidential submission in which he, *inter alia*, comments on the documents received from the Registry and to which he appends “his statement of acceptance of responsibility and remorse”, a handwritten letter dated 18 June 2024.<sup>25</sup> On 3 July 2024, the Prosecution filed a confidential submission in relation to this filing.<sup>26</sup>

14. On 12 July 2024, Krstić filed another confidential submission informing me that he met with the Prosecution on 10 July 2024, at their request, so that they may ask him questions relevant for their ongoing investigations, and asking that I take “his wish to cooperate” into account as evidence of his full acceptance of the judgements against him and of his genuine remorse.<sup>27</sup> On 19 July 2024, the Prosecution filed a confidential response arguing, *inter alia*, that Krstić should not be credited for this meeting as he did not provide any information.<sup>28</sup> Krstić filed a confidential reply on 4 August 2024,<sup>29</sup> and the Prosecution filed a confidential request for leave to file a sur-reply, along with the sur-reply, on 6 August 2024.<sup>30</sup>

15. On 20 November 2024, Krstić filed a submission wherein he: (i) asserts that an unprecedented number of media outlets, both international and in the former Yugoslavia, have published articles commenting on the 2024 Letter; (ii) contends that the public’s reactions to the 2024 Letter may be relevant for my determination of the Application; and (iii) provides the headlines and links to 15 of such articles.<sup>31</sup>

16. As no Judge who imposed the sentence upon Krstić is a Judge of the Mechanism, I consulted with Judge Seon Ki Park and Judge Ivo Nelson de Caires Batista Rosa, in accordance with Rule 150

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<sup>24</sup> Internal Memorandum from the Registrar to the President, dated 4 August 2022 (strictly confidential) (“Registrar Memorandum of 4 August 2022”), *transmitting* an Internal Memorandum from the Head of WISP to the Registrar, dated 4 August 2022 (strictly confidential) (“WISP Memorandum”), paras. 3-5. The Registrar indicated that the information contained in the WISP Memorandum was provided on a strictly confidential basis and should not be made available to Krstić or the Prosecution. *See* Registrar Memorandum of 4 August 2022, para. 2.

<sup>25</sup> Krstić Defence Submission in Support of Early Release, 24 June 2024 (confidential with confidential Annex). On 11 November 2024, a public redacted version was filed on the record following my order to do so. *See* Krstić Defence Submission, 11 November 2024 (“Comments”). As an annex to the Comments, Krstić included a letter, dated 18 June 2024. *See* Comments, Annex (“2024 Letter”). *See also* Order for a Public Redacted Version of Filing Related to Radislav Krstić’s Application for Early Release, 21 October 2024 (confidential), p. 2.

<sup>26</sup> Prosecution’s Submission on Krstić’s Defence Submission in Support of Early Release, 3 July 2024 (confidential) (“Prosecution Submission of 3 July 2024”), paras. 1-6.

<sup>27</sup> Krstić Defence Submission, 12 July 2024 (confidential) (“Submission of 12 July 2024”), paras. 1, 3.

<sup>28</sup> Prosecution’s Response to Krstić Defence Submission of 12 July 2024, 19 July 2024 (confidential) (“Prosecution Response of 19 July 2024”), paras. 1-5.

<sup>29</sup> Krstić Defence Reply, 4 August 2024 (confidential) (“Krstić Reply of 4 August 2024”), paras. 2-5.

<sup>30</sup> Prosecution’s Request for Leave to File Sur-Reply and Sur-Reply to Krstić’s Reply of 4 August 2024, 6 August 2024 (confidential) (“Prosecution Request of 6 August 2024”), paras. 1-5.

<sup>31</sup> Krstić Defence Submission, 20 November 2024 (“Further Submission”).

of the Rules of Procedure and Evidence of the Mechanism (“Rules”) and paragraph 16 of the Practice Direction.

### III. APPLICABLE LAW

17. According to Article 25(2) of the Statute of the Mechanism (“Statute”), the Mechanism supervises the enforcement of sentences pronounced by the International Criminal Tribunal for Rwanda (“ICTR”), the ICTY, or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States.

18. Pursuant to Article 26 of the Statute, there shall only be pardon or commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law. While Article 26 of the Statute, like the equivalent provisions in the Statutes of the ICTR and the ICTY before it, does not specifically mention requests for early release of convicted persons, the Rules reflect the President’s power to deal with such requests and there is a longstanding practice of doing so in the ICTR, the ICTY, and the Mechanism.

19. Rule 150 of the Rules provides that the President shall, upon receipt of a direct petition from the convicted person, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate. If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges.

20. The general standards for granting early release are set out in Rule 151 of the Rules, which provides that in making a determination on pardon, commutation of sentence, or early release, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner’s demonstration of rehabilitation, and any substantial cooperation of the prisoner with the Prosecution.

21. Paragraph 5 of the Practice Direction provides that a convicted person may apply directly to the President for pardon, commutation of sentence, or early release, if he or she believes that he or she is eligible.

22. Paragraph 10 of the Practice Direction indicates that the President may collect information, directly or through the Registry, which he or she considers relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate. Paragraph 12 of the Practice Direction provides that, once all information requested has been received, the President shall communicate, directly or through the Registry, relevant information to the convicted person in a

language that he or she understands. Paragraph 13 of the Practice Direction states that the convicted person shall then be given 14 days to examine the information, following which he or she may provide any written submissions in response.

23. Paragraph 19 of the Practice Direction specifies that the President shall determine whether early release is to be granted on the basis of the interests of justice and the general principles of law, having regard to the criteria specified in Rule 151 of the Rules, and any other information, as well as the views of the Judges consulted in accordance with Rule 150 of the Rules. Paragraph 20 of the Practice Direction states that if early release is granted, it may be subject to conditions.

## IV. ANALYSIS

### A. Preliminary Matters

24. I recall that, on 15 November 2022, I denied Krstić's last application for early release after a careful and thorough assessment of his submissions alongside detailed information received from a number of sources. In particular, in reaching my conclusion I considered: (i) information from the WISP about witnesses who testified or provided evidence against Krstić during his trial; (ii) media reports published in Serbia about Krstić since the decision denying his early release in September 2019; and (iii) information from the Polish authorities, the Serbian authorities, the Prosecution, and certain victims' groups.<sup>32</sup>

25. The present application was filed on 15 January 2024—within 15 months of the last decision denying Krstić early release. In that time, Krstić was transferred from Poland to the UNDU, where he remains on a temporary basis.<sup>33</sup> Given this change in circumstances, I considered it appropriate to collect from the UNDU the information enumerated in paragraphs 10(a) through 10(c) of the Practice Direction.<sup>34</sup> However, considering the recency of the information collected for Krstić's last early release application and the fact that I have no indication of other material changes warranting updates, I have decided to rely on information provided for Krstić's previous application including the compilation of media reports and the submissions from the WISP, the Serbian authorities, the Prosecution, and victims' groups.<sup>35</sup>

26. I note that, although not invited to make submissions specific to the Application, the Prosecution has of its own accord opted to file a number of submissions in relation to the Application. Considering that the Prosecution Response of 24 January 2024 and the Prosecution Submission of

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<sup>32</sup> 2022 Decision Denying Early Release, paras. 72-86.

<sup>33</sup> *See supra* para. 5.

<sup>34</sup> *See supra* para. 10.

<sup>35</sup> *See supra* para. 12.

3 July 2024 merely convey the Prosecution’s views, and neither provide any new factual information relevant to my determination of the Application, I have disregarded both filings as well as Krstić’s reply to the former.<sup>36</sup> However, as the Prosecution Response of 19 July 2024 is in response to new information that the Prosecution is uniquely positioned to address, I will consider it in relation to the Application. I will also accept both the related reply, and the sur-reply as validly filed.<sup>37</sup>

## **B. General Standards for Granting**

27. A decision on whether to grant an early release application is taken by the President on the basis of the interests of justice and the general principles of law, having regard, *inter alia*, to the criteria specified in Rule 151 of the Rules.<sup>38</sup> According to the Mechanism’s jurisprudence, a convicted person having served two-thirds of his or her sentence shall be merely eligible to be considered for early release and not entitled to such release.<sup>39</sup> Against this backdrop, it is therefore necessary for me, in determining whether early release is appropriate, to analyse and consider the convicted person’s current situation, taking into account the non-exhaustive list of factors set out in Rule 151 of the Rules.<sup>40</sup> The mere passage of time cannot constitute sufficient grounds for early release.<sup>41</sup>

### **1. Gravity of Crimes and Treatment of Similarly-Situated Prisoners**

28. In the 2022 Decision Denying Early Release, I conducted a detailed assessment of Krstić’s eligibility for early release and the gravity of his crimes. As there have been no changes relevant to these factors in the interim, I reaffirm my previous conclusions. Specifically, I reiterate that: (i) Krstić became eligible for early release upon passing the two-thirds threshold on 28 March 2022;<sup>42</sup> and (ii) there is no doubt as to the high gravity of his crimes.<sup>43</sup>

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<sup>36</sup> *See supra* paras. 9, 13.

<sup>37</sup> *See supra* para. 14.

<sup>38</sup> *See supra* paras. 18, 23.

<sup>39</sup> *Prosecutor v. Dragomir Milošević*, Case No. MICT-16-98-ES, Decision on the Early Release of Dragomir Milošević, 13 December 2024 (public redacted) (“*Milošević Decision*”), para. 30; *Prosecutor v. Sredoje Lukić*, Case No. MICT-13-52-ES.2, Decision on the Application for Early Release of Sredoje Lukić, 17 October 2024 (public redacted) (“*Lukić Decision*”), para. 33; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted), para. 24.

<sup>40</sup> *Milošević Decision*, para. 30; *Lukić Decision*, para. 33; 2022 Decision Denying Early Release, para. 32.

<sup>41</sup> *Milošević Decision*, para. 30; *Lukić Decision*, para. 33; *Prosecutor v. Bruno Stojić*, Case No. MICT-17-112-ES.3, Decision on the Application for Early Release of Bruno Stojić, 17 January 2024 (public redacted), para. 100.

<sup>42</sup> 2022 Decision Denying Early Release, para. 29.

<sup>43</sup> 2022 Decision Denying Early Release, paras. 35-41.



## 2. Demonstration of Rehabilitation

29. The Mechanism's jurisprudence has recognised a number of positive indicators which may demonstrate rehabilitation under Rule 151 of the Rules.<sup>44</sup> These indicators include: (i) the acceptance of responsibility for the crimes a person was convicted for or for actions which enabled the commission of the crimes; (ii) signs of critical reflection of the convicted person upon his or her crimes; (iii) public or private expressions of genuine remorse or regret; (iv) actions taken to foster reconciliation or seek forgiveness; (v) evidence that a convicted person has a positive attitude towards persons of other backgrounds, bearing in mind the discriminatory motive of some of the crimes; (vi) participation in rehabilitation programmes in prison; (vii) a convicted person's mental health status; and (viii) a positive assessment of a convicted person's prospects to successfully reintegrate into society.<sup>45</sup> This is a non-exhaustive list and convicted persons are not expected to fulfil all of these indicators in order to demonstrate rehabilitation.<sup>46</sup>

30. It falls upon the convicted person to demonstrate that sufficient progress has been made in his or her rehabilitation, and that granting release before the full sentence is served would be a responsible exercise of the President's discretion.<sup>47</sup> Given that genocide, crimes against humanity, and war crimes are among the gravest crimes known to humankind, it is not appropriate to view the rehabilitation of perpetrators of such crimes as one would view the rehabilitation of perpetrators of so-called ordinary crimes adjudicated at the national level.<sup>48</sup>

31. Good behaviour in prison is the very minimum to be expected of a convicted person while serving his or her sentence.<sup>49</sup> In my opinion, such good behaviour cannot on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.<sup>50</sup>

32. Turning to the extent to which Krstić has demonstrated rehabilitation, I consider the Prison Report, the Application, the Comments, and the 2024 Letter to be the most probative materials before me.

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<sup>44</sup> See *Milosević* Decision, para. 44; *Lukić* Decision, para. 47; *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, 31 December 2019 (public redacted) ("*Bralo* Decision"), paras. 37-41.

<sup>45</sup> *Milosević* Decision, para. 44; *Lukić* Decision, para. 47; *Bralo* Decision, para. 39 and references cited therein.

<sup>46</sup> *Milosević* Decision, para. 44; *Lukić* Decision, para. 47; *Bralo* Decision, para. 39.

<sup>47</sup> *Milosević* Decision, para. 45; *Lukić* Decision, para. 48; *Bralo* Decision, para. 39.

<sup>48</sup> *Milosević* Decision, para. 45; *Lukić* Decision, para. 48; *Bralo* Decision, para. 38.

<sup>49</sup> *Milosević* Decision, para. 46; *Lukić* Decision, para. 49; 2022 Decision Denying Early Release, para. 49.

<sup>50</sup> *Milosević* Decision, para. 46; *Lukić* Decision, para. 49; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision on the Application for Early Release of Radivoje Miletić, 18 January 2024, para. 50.

(a) Behaviour in Prison

33. Krstić submits that, since my positive assessment of his behaviour in prison in the 2022 Decision Denying Early Release, it has “continued to be very good”.<sup>51</sup> I recall in this respect that, in the 2022 Decision Denying Early Release, I had indeed found that Krstić’s behaviour while serving his sentence in Poland was very good.<sup>52</sup>

34. The Prison Report indicates that since his return to the UNDU, as well as during Krstić’s previous periods of detention at the UNDU, he has shown respect for UNDU management and staff and has complied with all relevant rules and instructions.<sup>53</sup> According to the UNDU Commanding Officer, Krstić has also maintained good relations with his fellow detainees.<sup>54</sup> Krstić is reported to be quieter and slower than previously and [REDACTED], which the UNDU Commanding Officer posits may be explained by [REDACTED] as well as his continued ageing and increased frailty.<sup>55</sup>

35. In his Comments, Krstić submits that he accepts the Prison Report “in full without objection” and expresses his gratitude to “everyone at UNDU for their highly professional treatment, for providing medical assistance and truly humane attitude towards him”.<sup>56</sup>

36. The information before me confirms that Krstić’s behaviour in prison has continued to be very good and, as such, merits positive weight in my consideration of his rehabilitation.

(b) Acceptance of Responsibility, Signs of Critical Reflection, and Expressions of Genuine Remorse or Regret

37. The Mechanism’s jurisprudence has recognised that: (i) an important factor in assessing a convicted person’s progress towards rehabilitation is the acceptance of responsibility for his or her crimes, even if this does not constitute a legal requirement to demonstrate rehabilitation and is not a precondition for early release; and (ii) a convicted person’s partial acceptance of responsibility for his or her crimes will merit positive weight but any notable difference between the role a convicted person ascribes to himself or herself, and the role actually played, can suggest a lack of sufficient critical reflection upon his or her crimes.<sup>57</sup>

<sup>51</sup> Application, para. 29, *referring to* 2022 Decision Denying Early Release, para. 55.

<sup>52</sup> 2022 Decision Denying Early Release, paras. 53, 55.

<sup>53</sup> Prison Report, p. 1.

<sup>54</sup> Prison Report, p. 1.

<sup>55</sup> Prison Report, p. 1.

<sup>56</sup> Comments, para. 4, *referring to* “the memorandums submitted by the Registry on 10 June 2024”, which I understand was when he received the Prison Report and the Medical Report from the Registrar. *See* Comments, paras. 1, 2, 4.

<sup>57</sup> *Milosević* Decision, para. 52; *Lukić* Decision, para. 56; *Prosecutor v. Vlastimir Đorđević*, Case No. MICT-14-76-ES, Decision on the Applications for Early Release of Vlastimir Đorđević, 30 November 2021 (public redacted), para. 70.

38. In my view, a statement made or referred to in support of an early release application should not be considered in isolation from its greater context.<sup>58</sup> The content of any such statement should be corroborated by positive actions taken by the convicted person, which indicate that he or she has critically reflected upon his or her crimes and is genuinely remorseful.<sup>59</sup> Tangible evidence of rehabilitation is indeed a crucial aspect, which helps to differentiate genuine expressions of remorse or regret from more opportunistic ones.<sup>60</sup>

39. In the Application, Krstić asserts that he has read and understood the 2022 Decision Denying Early Release and that he “has taken on board [my] criticism of the generic nature of his personal statement”.<sup>61</sup> Referring to my findings on the gravity of his crimes, Krstić submits that he accepts and acknowledges the very high gravity of his crimes, states that he is “profoundly sorry”, and “offers his heartfelt apologies to all the victims of these crimes”.<sup>62</sup> He indicates that, after the information outlined in the Practice Direction has been collected, he intends to submit a “comprehensive statement of responsibility and remorse”, which will address all relevant issues raised in a “non-generic way”.<sup>63</sup> Krstić asserts his belief that “once he has had the opportunity to fully express himself [I] will see that he has indeed fully accepted responsibility for the crimes he committed and was convicted of”.<sup>64</sup>

40. In his Comments, Krstić submits that he stands by all the statements made in his 2022 submissions and seeks to incorporate those statements as part of the present Application.<sup>65</sup> He avers that, since his return to the UNDU in 2023, his critical reflection has “experienced its full expression”.<sup>66</sup>

41. Krstić relies on the 2024 Letter in which he contends that he: (i) “states in detail and comprehensively that he accepts his crimes”; (ii) “explicitly accepts that he is guilty of aiding and abetting genocide”; and (iii) “accepts responsibility for other serious crimes for which he was convicted”.<sup>67</sup> He asserts that his “acceptance is precise and direct” and that “it includes all the key elements of the judgments against him in the factual and legal sense”.<sup>68</sup> According to Krstić, as the first person to be convicted of genocide by the ICTY, his acceptance of responsibility for the genocide

<sup>58</sup> *Milosević* Decision, para. 53; *Lukić* Decision, para. 57; 2022 Decision Denying Early Release, para. 61.

<sup>59</sup> *Milosević* Decision, para. 53; *Lukić* Decision, para. 57; 2022 Decision Denying Early Release, para. 61.

<sup>60</sup> *Milosević* Decision, para. 53; *Lukić* Decision, para. 57; *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Application for Early Release of Miroslav Bralo, 28 December 2023 (public redacted), para. 62.

<sup>61</sup> Application, para. 21. *See also* Application, para. 35.

<sup>62</sup> Application, para. 26.

<sup>63</sup> Application, para. 30. *See also* Application, para. 21.

<sup>64</sup> Application, para. 36.

<sup>65</sup> Comments, para. 3, *referring to* Petition for Early Release, 21 April 2022 (public with confidential Annex B) and Written Submission in Support [of] Petition for Early Release, 6 October 2022 (confidential) (“2022 Comments”).

<sup>66</sup> Comments, para. 8.

<sup>67</sup> Comments, paras. 6-7

<sup>68</sup> Comments, para. 7.

in Srebrenica in July 1995 “has special weight and significance”.<sup>69</sup> Krstić further claims that in his letter he “addresses the public in the former Yugoslavia, accepts his guilt, and sends a message that is dramatic, sincere and poignant”.<sup>70</sup> In his view, “[t]he fact that he is making this statement at the moment when ICTY judgments are being challenged and denied, [and] that he is doing it at the moment when the [United Nations] General Assembly [is passing] a resolution on Srebrenica which is based on the judgments in the case [against him] gives special weight and importance to [his] expression of acceptance of responsibility and remorse”.<sup>71</sup>

42. In addition, Krstić “asks to be allowed to go to Potočari to express his deepest respect for the victims and his profound remorse” and asserts that if his request is accepted, “it would be an unprecedented gesture with strong repercussions on the peace and reconciliation process in the area of the former Yugoslavia”.<sup>72</sup> He further asserts that he “cannot do more than what he is doing with his [2024 L]etter” and that, as “the first to be convicted of aiding and abetting genocide, his words and actions have special weight in this issue”.<sup>73</sup>

43. Moreover, in the Submission of 12 July 2024, Krstić informs me that the Prosecution requested to meet with him and to ask him questions relevant to its ongoing investigations.<sup>74</sup> Krstić asserts that he accepted the request and, over the course of approximately two hours on 10 July 2024, answered the Prosecution’s questions “as best he could having in mind the circumstances”.<sup>75</sup> He contends that his “wish to cooperate is [...] additional evidence of his full acceptance of the Judgements and of his genuine remorse” and, as such, asks that I take it into account when deciding the Application.<sup>76</sup>

44. The Prosecution responds, *inter alia*, that Krstić should not be credited for this meeting, which it asserts lasted approximately one hour, as he did not provide any information that the Prosecution would consider as cooperation, namely truthful and valuable “information that, if verified, would directly lead to the recovery of July 1995 Srebrenica or Žepa victims who remain missing”.<sup>77</sup> According to the Prosecution, Krstić was informed at the end of the meeting that he did not provide any such information.<sup>78</sup> Moreover, the Prosecution contends that Krstić made comments that bring

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<sup>69</sup> Comments, para. 9.

<sup>70</sup> Comments, para. 9.

<sup>71</sup> Comments, para. 10.

<sup>72</sup> Comments, para. 11.

<sup>73</sup> Comments, para. 12.

<sup>74</sup> *See supra* para. 14.

<sup>75</sup> Submission of 12 July 2024, para. 1. *See supra* para. 14.

<sup>76</sup> Submission of 12 July 2024, para. 3. *See supra* para. 14.

<sup>77</sup> Prosecution Response of 19 July 2024, paras. 3, 5.

<sup>78</sup> Prosecution Response of 19 July 2024, para. 3.

into doubt the veracity of his statements regarding his rehabilitation.<sup>79</sup> On 4 August 2024, Krstić filed a reply asking me to disregard the Prosecution’s allegations as they misrepresent his arguments and comments during the interview.<sup>80</sup> On 6 August 2024, the Prosecution filed leave for sur-reply and a sur-reply submitting that Krstić’s allegations have no basis.<sup>81</sup>

45. The information before me suggests that, since my last assessment, Krstić has further reflected upon his crimes, as well as his responsibility and remorse for them.<sup>82</sup> In particular, I note that in the 2024 Letter, after emphasising that “the genocide in Srebrenica was committed by individuals, that they are the only ones to blame, that they should be held accountable for their deeds and misdeeds”, Krstić acknowledges his own role and blameworthiness by stating: “unfortunately I am one of them”.<sup>83</sup> Krstić also expresses a wish for his “words to be read and understood by young people who live today in the areas where a country named Yugoslavia used to be” and to make them “stop and think – nevermore. No more war, no more death, because someone is of different religion, or different nation, or has different beliefs, no more genocide.”<sup>84</sup> I find these statements to be thoughtful and to disclose an understanding of the broad impact of his crimes. I also appreciate that public perception of statements made by Krstić, the first person the ICTY convicted of genocide, may be different than if the statements were made by other persons convicted by the ICTY.<sup>85</sup>

46. To the extent that the statements in the 2024 Letter are a genuine reflection of Krstić’s beliefs, I welcome them. However, given the circumstances, I am mindful of the strong incentive for such statements to be made opportunistically by convicted persons for the purpose of supporting applications for early release. The fact remains that words are just that—words—and their sincerity must be judged by analysing the overall context in which they were said, assessing whether they are reflected in concrete and verifiable actions taken by the convicted person, and considering the timing of such actions.

47. When comparing the present statements with those he previously made, I find limited evidence that Krstić has indeed taken on board my criticism of the generic nature of his last statement.<sup>86</sup> First, although Krstić makes important acknowledgements in the 2024 Letter,<sup>87</sup> he only

<sup>79</sup> Prosecution Response of 19 July 2024, paras. 1-5.

<sup>80</sup> Krstić Reply of 4 August 2024, paras. 2-5.

<sup>81</sup> Prosecution Request of 6 August 2024, paras. 1-5.

<sup>82</sup> *See supra* paras. 41-42.

<sup>83</sup> 2024 Letter, Registry Pagination (“RP”) 415.

<sup>84</sup> 2024 Letter, RP 415.

<sup>85</sup> *See, e.g.*, Further Submission, pp.1-3.

<sup>86</sup> Application, paras. 21, 35. *See also* 2022 Decision Denying Early Release, para. 60.

<sup>87</sup> 2024 Letter, RP 415 (wherein he states: “I aided and abetted the genocide [...] I committed an unimaginable and unforgivable crime”; “I aided and abetted the crime against humanity by participating in the joint criminal enterprise to forcibly remove the Bosnian Muslim civilians from Potočari [...] where I participated in creating a humanitarian crisis

minimally elaborates on what he has previously said.<sup>88</sup> Second, as I pointed out in my last decision, Krstić’s previous statement failed to acknowledge the Trial Chamber’s finding that “thousands of Bosnian Muslims, residing or taking refuge in Srebrenica, were murdered during the period of 12 to 19 July 1995” and that “almost all of those murdered at the execution sites were adult Bosnian Muslim men and that up to 7000-8000 men were executed.”<sup>89</sup> I observe that the 2024 Letter also makes no mention of the finding that thousands of people were executed in the genocide—a fact which is central to understanding the scope of his criminal wrongdoing.

48. Furthermore, other statements in the 2024 Letter belie Krstić’s full acceptance of responsibility. For instance, Krstić asserts that he accepts the judgements of the ICTY “where it is established that the forces of the army to which I belonged committed genocide against Bosnian Muslims in Srebrenica in July 1995”,<sup>90</sup> but he seems to distance himself by focussing on what he knew, and downplaying how his own action—or inaction—assisted the commission of the crimes for which he was found to be responsible. Krstić writes: (i) “I helped and supported the genocide by knowing that some members of the Main Staff intended to commit the genocide”; and (ii) “I knew that the Main Staff did not have enough forces to carry out executions without the use of the forces of the Drina Corps and that I knew that the use of forces under my command would significantly contribute to the execution of Bosnian Muslim prisoners”.<sup>91</sup>

49. It must be emphasised that Krstić was the Drina Corps’ Commander. He was not merely a rank and file member of the Drina Corps who knew that some Main Staff members intended to commit the genocide, that the Main Staff did not have enough forces to carry out executions without the use of Drina Corps forces, and that the use of Drina Corps forces would significantly contribute to the execution of Bosnian Muslim prisoners. As such, Krstić had the power to oppose the use of the forces under his command, but he did not. Instead, and despite his knowledge of the likely outcome, Krstić permitted the Main Staff to call upon Drina Corps resources.<sup>92</sup> In this respect, I recall that Krstić’s argument that he “was in no position to take any action to prevent the executions, or punish those who were involved”,<sup>93</sup> was rejected by the Trial Chamber as it found evidence of General

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that preceded the forceful transfer of women, children and elderly from Srebrenica, in which I also participated, knowing that the civilians in Potočari were exposed to murder, rape, beatings and abuse”).

<sup>88</sup> Cf. 2024 Letter, RP 415; 2022 Decision Denying Early Release, para. 58 (which quotes extensively from Krstić’s letter dated 12 April 2022 including where he “accept[ed] that all the crimes listed in the judgement of the Appeals Chamber’s [*sic*] were committed in Srebrenica in 1995 and that [he] assisted and supported them by making available the resources and personnel of the Drina Corps under [his] command, which were used for the execution of Muslim-Bosniak prisoners”).

<sup>89</sup> 2022 Decision Denying Early Release, para. 60

<sup>90</sup> 2024 Letter, RP 415.

<sup>91</sup> 2024 Letter, RP 415.

<sup>92</sup> Appeal Judgement, para. 137. *See also* Appeal Judgement, para. 134.

<sup>93</sup> Trial Judgement, para. 416. *See* Appeal Judgement, para. 136.

Mladić's orders being challenged by the Drina Corps' Command, as well as evidence of Krstić himself countering an order issued by the Main Staff.<sup>94</sup>

50. I also note that, although the Appeals Chamber set aside Krstić's conviction as a participant in a joint criminal enterprise to commit genocide, concluding that the evidence did not support a finding that he possessed the genocidal intent, the Appeals Chamber found him guilty of aiding and abetting genocide as the evidence established that he "was aware of the intent to commit genocide on the part of some members of the VRS Main Staff, and with that knowledge, he did nothing to prevent the use of Drina Corps personnel and resources to facilitate the killings".<sup>95</sup> Similarly, in relation to the murders of the Bosnian Muslim civilians under Article 3 of the ICTY Statute and extermination and persecution under Article 5 of the ICTY Statute, arising from the executions of the Bosnian Muslims of Srebrenica between 13 and 19 July 1995, the Appeals Chamber concluded that Krstić's criminal responsibility was that of an aider and abettor.<sup>96</sup> In reaching this conclusion, the Appeals Chamber noted that the evidence established that he "knew that those murders were occurring and that he permitted the Main Staff to use personnel and resources under his command to facilitate them".<sup>97</sup> In my view, the conspicuous absence of any explicit acknowledgement that he was in a position to act, but did not, undermines Krstić's submission that he fully accepts the judgements against him.

51. Turning to whether Krstić's statements of remorse and acceptance are reflected in concrete and verifiable actions that could further evidence his rehabilitation,<sup>98</sup> I note that in July 2024, at its request, Krstić agreed to meet with the Prosecution to answer questions relevant to its ongoing investigations.<sup>99</sup> I consider Krstić's willingness to meet with the Prosecution—notwithstanding the contrasting viewpoints as to Krstić's conduct and statements during the meeting<sup>100</sup>—merits some positive consideration.<sup>101</sup>

52. I also note that Krstić attempts to take positive actions through the 2024 Letter itself, by: (i) expressing support for the United Nations General Assembly resolution designating 11 July as the

<sup>94</sup> Trial Judgement, paras. 416, 417. *See* Appeal Judgement, para. 136.

<sup>95</sup> *See* Appeal Judgement, paras. 134, 237, 238. *See also supra* para. 4.

<sup>96</sup> *See* Appeal Judgement, paras. 144, 237. *See also supra* para. 4.

<sup>97</sup> *See* Appeal Judgement, para. 144.

<sup>98</sup> *See supra* paras. 38, 46.

<sup>99</sup> *See supra* paras. 14, 43.

<sup>100</sup> Prosecution Response of 19 July 2024, para. 3 ("At the meeting, Krstić was informed that the Prosecution would consider as cooperation the provision of truthful and valuable information—information that, if verified, would directly lead to the recovery of July 1995 Srebrenica or Žepa victims who remain missing. [...] Krstić did not provide any such information and Krstić was informed accordingly at the end of the meeting.").

<sup>101</sup> Prosecution Response of 19 July 2024, para. 4.

International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica;<sup>102</sup> (ii) stating that he “would love for [his] words to be heard by as many people as possible in the country [he is] from, that maybe [his] words will, at least encourage someone to think about the terrible crime in which [he] participated, about the punishment that followed, about the deep, painful but belated regret that [he has] been living with for decades”;<sup>103</sup> and (iii) asking to go to Potočari one more time in his life, “to bow to the victims and ask for forgiveness” upon his release—if I agree with it and the victims’ families were to allow it.<sup>104</sup> These sentiments, if genuine, could contribute to fostering reconciliation. However, the timing of these “actions”—specifically their inclusion in the same letter Krstić submitted to support his early release application—casts doubt on their sincerity.

53. Moreover, while I am aware that Krstić is deprived of freedom and, as such, may be limited in what he can be expected to do, I find it telling that he has never candidly addressed the extent of the information that he may or may not have received about the unaccounted remains of the victims of this genocide. To this day, many families of these missing are still waiting for information about what happened to their loved ones and cannot find closure until they do. Considering that the Drina Corps’ was found to have been involved in the executions, burials, and reburials,<sup>105</sup> it is reasonable to conclude that, as the Commander of the Drina Corps, Krstić had access to extensive information about their operations.<sup>106</sup> In my view, Krstić could demonstrate genuine remorse by either disclosing any relevant information he possesses or convincingly and transparently explaining why he lacks such information that might assist in the ongoing search for the missing remains. Such tangible action would do more to persuade me that Krstić is not indifferent to the victims of his crimes and to the persistent tragedy surrounding the missing remains, than expressions of sympathy and understanding for the victims.<sup>107</sup>

54. In light of the above, I do not find that Krstić’s statements of remorse and acceptance fully encompass his entire criminal conduct or are genuine, rather than being motivated solely by his request for early release. Krstić appears to have accepted many of the findings in the judgments of

<sup>102</sup> 2024 Letter, RP 415. *See also* United Nations General Assembly Resolution A/RES/78/282, adopted on 23 May 2024.

<sup>103</sup> 2024 Letter, RP 415.

<sup>104</sup> 2024 Letter, RP 415.

<sup>105</sup> *See* Trial Judgment, paras. 429-433, 435-437, 439-443, 446-458, 460.

<sup>106</sup> *See* Trial Judgment, paras. 415 (“the Trial Chamber does accept that, at a minimum, General Krstić, the Commander of the Drina Corps, must have known that the massive reburial operation was occurring within his zone of responsibility”), 418 (“The Trial Chamber finds that General Krstić was aware that men under his command had participated in the execution of Bosnian Muslim men between 14 and 19 July 1995”), 631 (“The Trial Chamber concludes that from the evening of 13 July, General Krstić exercised “effective control” over Drina Corps troops and assets throughout the territory on which the detentions, executions and burials were taking place.”).

<sup>107</sup> *See* 2024 Letter, RP 415 (“Every moment of every day, I think about the victims of the genocide in Srebrenica, I mourn them and pray for their soul. I know that the mother and sister of the innocent victim will not believe that these words are truthful; I also know that my words cannot ease the pain or the suffering that will never disappear. I am not expecting any of that, nor do I have the right to seek or ask for that.”).



the Trial and Appeals Chambers; however, I find that his statements continue to lack critical reflection on certain key aspects. While I welcome that Krstić accepts the genocide, considering the persistent denial of the genocide in certain circles, his glossing over the number of persons killed raises questions about whether he fully appreciates the scope of these crimes. I have similar doubts about Krstić's acceptance of his own responsibility for the crimes. He states that he accepts the genocide, and the involvement of members of the Drina Corps, including those under his command. What is missing, however, is a clear acknowledgement of acceptance and remorse for the fact that as the Commander of the Drina Corps it was within his power to prevent the use of Drina Corps personnel and resources, and that had he done so, at least some of the 7000-8000 Bosnian Muslim men who were executed during the genocide may have lived.<sup>108</sup> Finally, the absence of concrete actions to corroborate the statements Krstić makes in the 2024 Letter raises further questions as to their genuineness and the extent to which they can be relied upon as evidence of his rehabilitation.

55. While Krstić's progress is commendable, I recall that the graver the criminal conduct in question the more compelling a demonstration of rehabilitation should be.<sup>109</sup> Krstić has not demonstrated that he has met the higher threshold needed for crimes of such gravity.

(c) Mental State and Prospects of Successful Reintegration into Society

56. Krstić submits that the post-release plans conveyed in his last application, namely with respect to his family, housing, finances and a commitment to keeping an extremely low profile in Serbia, "remain intact to this day".<sup>110</sup>

57. The Prison Report indicates that Krstić maintains good contact with [REDACTED], by telephone, by video visits and receiving them for in-person visits, and that Krstić's contacts with the outside world are almost exclusively with [REDACTED] family members.<sup>111</sup> The Medical Report indicates that [REDACTED] at the UNDU diagnosed Krstić with [REDACTED].<sup>112</sup> Krstić also regularly consults with [REDACTED] and receives [REDACTED] treatment for [REDACTED]—both of which are recommended to be continued should he be released.<sup>113</sup>

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<sup>108</sup> Trial Judgment, para. 423 ("Furthermore, on 15 July 1995, when Colonel Beara contacted him to inform him that the Main Staff was unable to secure enough troops to continue with the executions, General Krstić chose to further assist in the commission of the crimes. *On 15 July 1995, thousands of prisoners were still alive; had General Krstić intervened at even that late date they might have been saved.*") (emphasis added). See Appeal Judgement, paras. 134, 237-239.

<sup>109</sup> *Milosević* Decision, para. 32; *Lukić* Decision, para. 35; 2022 Decision Denying Early Release, para. 34.

<sup>110</sup> Application, para. 31.

<sup>111</sup> Prison Report, pp. 1-2.

<sup>112</sup> Medical Report, p. 1.

<sup>113</sup> Medical Report, p. 1.

58. The information before me suggests that, if he were released, Krstić would have resources in place to support his reintegration into society. Although these elements do not in and of themselves demonstrate rehabilitation, I consider that they merit positive weight in my consideration of his rehabilitation.

(d) Overall Assessment

59. As set out above, Krstić's behaviour in prison has continued to be very good and, should he be released, he would have the necessary resources to support his positive reintegration into society. The submissions accompanying the present Application suggest that, in the intervening year, Krstić has moved further along the continuum of rehabilitation but has not yet made a demonstration of rehabilitation commensurate with the gravity of his criminal conduct. In this respect, I recall that Krstić was convicted of: (i) aiding and abetting genocide, murder as a violation of the laws or customs of war, and extermination and persecution as crimes against humanity; and (ii) committing persecution as a crime against humanity and murder as a violation of the laws or customs of war.<sup>114</sup>

3. Substantial Cooperation with the Prosecutor

60. In the Application, Krstić acknowledges that he has not "engaged in substantial cooperation with the Prosecutor" but asserts that he was not asked to do so.<sup>115</sup> I recall that, in relation to his previous application, the Prosecution submitted that Krstić did not substantially cooperate with it in the course of his trial or appeal, nor at any point while serving his sentence.<sup>116</sup>

61. As noted above,<sup>117</sup> in July 2024, Krstić met with the Prosecution at its request, and asks that I take this cooperation into account as additional evidence of his full acceptance of the judgements and of his genuine remorse.<sup>118</sup> The Prosecution responds, *inter alia*, that Krstić should not be credited for this meeting as he did not provide any information that the Prosecution would consider as cooperation.<sup>119</sup> As Krstić frames his participation in the July 2024 meeting as evidence of his remorse and that he fully accepts the findings in the judgments of the Trial and Appeals Chambers, I have considered these arguments in relation to his rehabilitation<sup>120</sup> and, to the extent that they may be viewed as cooperation with the Prosecution, will not consider them again in relation to this factor.

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<sup>114</sup> See *supra* para. 4.

<sup>115</sup> Application, para. 37.

<sup>116</sup> Prosecution Memorandum, para. 19.

<sup>117</sup> See *supra* paras. 14, 43.

<sup>118</sup> Submission of 12 July 2024, paras 2-3. See *supra* para. 14.

<sup>119</sup> Prosecution Response of 19 July 2024, paras. 3, 5.

<sup>120</sup> See *supra* para. 51.

62. Based on the above, Krstić cannot be said to have provided substantial cooperation to the Prosecution. Accordingly, this merits no weight in my consideration of the Application.

### C. Other Considerations

#### 1. Other Comments, Information, and Submissions

63. Decisions on early release have established that the President may receive and consider general comments and information from the Prosecution with regard to early release applications.<sup>121</sup> In doing so, the President shall exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person, and carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.<sup>122</sup>

64. I recall that, in relation to his previous application, the Prosecution was of the view that Krstić's early release was not warranted<sup>123</sup> citing, among other things, the particularly high gravity of his crimes,<sup>124</sup> and lack of substantial cooperation with the Prosecution.<sup>125</sup> In addition, the Prosecution requested that appropriate conditions be imposed if I were to release Krstić early.<sup>126</sup> I consider that the Prosecution's comments in this respect remain relevant to the present Application and have thus given them due regard.

65. I take note that the Serbian authorities had previously: (i) indicated that, should Krstić be released there would be no obstacles to his residing in Serbia; and (ii) provided assurances that the relevant authorities would be prepared to monitor any conditions imposed by the Mechanism, and provide guarantees to this effect.<sup>127</sup>

66. I will also consider information related to the potential impact Krstić's release may have on witnesses and victims, including: (i) information concerning the 82 witnesses who testified or provided evidence against Krstić during his trial that was conveyed by the WISP;<sup>128</sup> (ii) the opposition to Krstić's early release set forth in the letter from the Association of Mothers of Srebrenica and Žepa

<sup>121</sup> *Milosević* Decision, para. 67; *Lukić* Decision, para. 71; 2022 Decision Denying Early Release, para. 72.

<sup>122</sup> *Milosević* Decision, para. 67; *Lukić* Decision, para. 71; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Decision on the Application of Radoslav Brđanin for Early Release, 28 February 2020 (public redacted), para. 83.

<sup>123</sup> Prosecution Memorandum, paras. 2-3.

<sup>124</sup> Prosecution Memorandum, paras. 2, 4-12, 29.

<sup>125</sup> Prosecution Memorandum, paras. 2, 19, 29.

<sup>126</sup> Prosecution Memorandum, paras. 24-26.

<sup>127</sup> Serbian Minister of Justice Letter, p. 3.

<sup>128</sup> WISP Memorandum, paras. 3-4, 9, 20.

Enclaves and the Association of Victims and Witnesses of Genocide;<sup>129</sup> and (iii) Krstić’s response thereto.<sup>130</sup>

67. I have remained mindful of all of the above-mentioned information in considering the present Application.

## 2. Health of the Convicted Person

68. Previous decisions have taken into account the state of the convicted person’s health in the context of an early release application.<sup>131</sup> In particular, I observe that a convicted person’s health must be considered when the seriousness of his or her condition makes it inappropriate for the convicted person to remain in prison any longer.<sup>132</sup>

69. Krstić asserts that “the injuries and trauma that he has suffered as a result of the attack against him while in prison in the United Kingdom” have been “a punishment far greater than that which was envisioned when the Appeals Chamber imposed its sentence”.<sup>133</sup> While he acknowledges that they do not amount to exceptional circumstances that would warrant early release, he contends that they ought to be taken into consideration when determining his early release.<sup>134</sup>

70. Krstić, who is presently 76 years old, also requests that his “serious medical issues” be taken into consideration.<sup>135</sup> In this respect Krstić asserts that he is: (i) in “considerable pain due to damaged blood vessels and atrophy” from his leg amputation; (ii) suffers from anaemia and high cholesterol; and (iii) has serious heart issues.<sup>136</sup>

71. The Medical Report indicates that Krstić suffers from a number of chronic ailments, including [REDACTED], that are currently stable and regularly monitored.<sup>137</sup> The Medical Report highlights three medical conditions that will require ongoing monitoring and treatment but do not otherwise affect his ability to continue serving his sentence. These include: (i) ongoing issues related to Krstić’s

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<sup>129</sup> Associations’ Letter, pp. 1-2.

<sup>130</sup> 2022 Comments, paras. 6, 16.

<sup>131</sup> *Milosević* Decision, para. 83; *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-ES, Decision on the Application for Release of Ratko Mladić (public redacted), 10 May 2024 (“*Mladić* Decision”), para. 28; *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on the Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted), para. 32.

<sup>132</sup> *Milosević* Decision, para. 83; *Mladić* Decision, para. 28; *Prosecutor v. Ljubiša Beara*, Case No. MICT-15-85-ES.3, Public Redacted Version of 7 February 2017 Decision of the President on the Early Release of Ljubiša Beara, 16 June 2017, paras. 47-49.

<sup>133</sup> Application, para. 39.

<sup>134</sup> Application, para. 39.

<sup>135</sup> Application, para. 40. *See also* Comments, para. 5.

<sup>136</sup> Application, para. 40.

<sup>137</sup> Medical Report, p. 1.

1994 leg amputation, including [REDACTED]; (ii) [REDACTED];<sup>138</sup> and (iii) [REDACTED], which requires regular monitoring and will potentially require [REDACTED] in the future.<sup>139</sup>

72. While it is clear that Krstić is an ageing man who suffers from a number of chronic conditions that will require medical supervision over the coming years, nothing in the information before me establishes compelling humanitarian grounds that would render his continued imprisonment inappropriate.

### 3. Consultation

73. In coming to my decision on whether to grant the Application, I have consulted with two other Judges of the Mechanism in accordance with Rule 150 of the Rules and paragraph 16 of the Practice Direction.<sup>140</sup> Judge Park and Judge Rosa concur that the Application should be denied, both considering that Krstić's statements fail to sufficiently demonstrate genuine remorse.

74. I am grateful for my Colleagues' views on these matters and have taken them into account in my ultimate assessment of the Application.

## V. CONCLUSION

75. Although Krstić is eligible to be considered for early release, I am of the opinion that the Application should be denied. The high gravity of his crimes strongly militates against granting him early release and, the graver the criminal conduct in question, the more compelling a demonstration of rehabilitation should be.<sup>141</sup> I welcome the fact that Krstić has made positive progress, and consider that his public acknowledgement that genocide occurred in Srebrenica and that he participated in it reflects a level of rehabilitation and is of considerable significance given the rise of historical revisionism and genocide denial in the region. However, I am not yet persuaded that he has demonstrated sufficient rehabilitation to reach this heightened threshold. Further, there is no evidence before me that demonstrates the existence of compelling humanitarian grounds which would warrant overriding this negative assessment.

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<sup>138</sup> See *supra* para. 57.

<sup>139</sup> Medical Report, pp. 1-2.

<sup>140</sup> See *supra* para. 16.

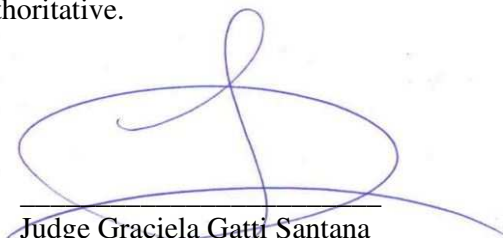
<sup>141</sup> See *supra* para. 55.

## VI. DISPOSITION

76. For the foregoing reasons, and pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules, I hereby **DENY** the Application.

Done in English and French, the English version being authoritative.

Done this 3rd day of February 2025,  
At The Hague,  
The Netherlands.



Judge Graciela Gatti Santana  
President

**[Seal of the Mechanism]**



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS

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<b>From/ De :</b>	<input checked="" type="checkbox"/> President/ Président	<input type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Prosecution/ Bureau du Procureur	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Registrar/ Greffier	<input type="checkbox"/> Other/ Autre
<b>Case Name/ Affaire :</b>	Prosecutor v. Radislav Krstić		<b>Case Number/ Affaire n° :</b> MICT-13-46-ES.1			
<b>Date Created/ Daté du :</b>	03 February 2025	<b>Date transmitted/ Transmis le :</b>	03 February 2025	<b>Number of Pages/ Nombre de pages :</b>	22	
<b>Original Language/ Langue de l'original :</b>	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ Autre (specify/ préciser):	
<b>Title of Document/ Titre du document :</b>	Decision on the application for early release of Radislav Krstić					
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